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Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

EXAMINER

SWEARINGEN, JEFFREY R

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2145

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/082,245
Filing Date: February 26, 2002
Appellant(s): FORD ET AL.

Thomas S. Auchterlonie
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/16/2006 appealing from the Office action mailed 4/11/2006.

Art Unit: 2145

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,857,190	Brown	1-1999
6,381,712 B1	Nemitz	4-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 4-10, 24-25, and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (U.S. Patent No. 5,857,190).

In regard to claim 1, Brown discloses *receiving a notice of locally-originated loggable information* and logging said information as shown in Brown, Figures 2 and 4, column 2, lines 36-56, and column 2,

Art Unit: 2145

lines 59-66. Brown discloses selectively making an entry in a log, as shown in column 5, lines 25-29 and lines 43-50. Brown discloses selectively making an entry in a remote log according to a separate criterion in column 7, lines 62-67 (based on reporting at specified times or when a selected number of events have been recorded therein). Brown discloses logging, but fails to explicitly disclose that logging can be performed locally. Brown does state that the components of the event system can be distributed over the entertainment network system (column 7, lines 32-33), the events can be forwarded to an alternate location (column 7, lines 46-53), a locally-based event evaluator for screening the events (column 5, lines 43-45), and that the operator can configure where the events are actually logged (column 5, lines 37-40). Since Brown has given both motivation for alternate logging (flexibility in resource allocation, column 5, lines 39-40) and the ability to configure where the events are logged (column 5, lines 37-40), it would be obvious to one of ordinary skill in the art to include local logging capability within Brown to allow for backup storage of events and to allow storage of events in case of a lost connection with a remote logging service.

In regard to claim 4, Brown is applied as in claim 1. Brown logs events in the remote log based on the number of events (criterion having been satisfied) received by an event buffer, which is different from determining whether an item is "loggable" in the Brown invention. See Brown, column 7, lines 62-67. This is *selectively making an entry in a remote log contingent upon said first criterion having been satisfied*.

In regard to claim 5, Brown is applied as in claim 1. Brown further discloses *wherein said first criterion and said second criterion are respective levels of information priority*. The first criterion in Brown as shown in claim 1 is determining whether an event is "loggable". The second criterion in Brown is based upon when the event occurred and how many events have occurred since the last batch remote logging. These are *respective levels of information priority*.

In regard to claims 6-7, Brown is applied as in claim 5. Brown fails to disclose assigning numbers in a certain fashion to priority level information and using those numbers with predetermined values in order to filter events. However, Brown does disclose assigning numbers to priority level information and using that number to partition events so the administrator can "selectively determine the level of events

Art Unit: 2145

that are reported" in column 6, lines 25-33. It would have been obvious to one of ordinary skill in the art to assign numbers in any way to priority levels and use them to filter information using any method, because assigning numbers in any specific order and deciding which ones in a group to select based upon their number is basic mathematics.

In regard to claim 8, Brown is applied as in claim 1. Brown further discloses use of a storage area network, as illustrated in the usage of "distribution network" in the abstract, Figure 1, and the descriptions given in column 3, lines 7-44 and column 4, lines 8-11.

In regard to claim 9, Brown is applied as in claim 1. Brown further discloses *said first criterion is a level of information priority*. See Brown, column 5, line 43 – column 6, line 33.

Claim 10 meets the same limitations of claims 1 and 4, and their rejections are likewise applicable against claim 10.

Claim 24 meets the same limitations of claim 1, and the rejection of claim 1 is likewise applied against claim 24.

Claim 25 meets the same limitations of claim 1, and the rejection of claim 1 is likewise applied against claim 25.

Claim 33 meets the same limitations of claim 4, and the rejection of claim 1 is applied against claim 33.

Claim 34 meets the same limitations of claim 5, and the rejection of claim 5 is applied against claim 34.

Claim 35 meets the same limitations of claim 8, and the rejection of claim 8 is applied against claim 35.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Nemitz (U.S. Patent No. 6,381,712).

In regard to claim 26, Brown is applied as in claim 25. Brown fails to disclose the use of JINI or JCORE distributed computing technology. However, Nemitz discloses the use of JINI for error detection. See Nemitz, column 3, lines 13-48. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Brown with Nemitz for the purpose of avoiding drivers and connection

Art Unit: 2145

procedure and adding devices freely to a self-managing network (Nemitz, column 3, lines 13-21). Brown gives motivation for the combination by stating that in order for remote logging to occur, computers must know what devices are going to log events. (Brown, column 2, lines 1-7). By adding a device without connection procedures, but rather by using JINI, Brown would easily be able to detect other devices on the network. The art is analogous because both Brown and Nemitz deal with error detection and notification.

(10) Response to Argument

Appellant argued Brown failed to disclose or suggest to one of ordinary skill in the art the ability to log data locally. Applicant argued Brown was limited to remote logging, and one of ordinary skill in the art would not have recognized the ability to log data locally instead of remotely. Respondant disagrees.

Brown disclosed a method of logging data remotely. This fact is undisputed by Appellant or Respondant.

One of ordinary skill in the art (suggested herein to be a person with a bachelor's degree in computer engineering or computer science and 3-5 years of industry experience in the field of network communications) recognizes upon reading the Brown patent that extensive network communication is involved in the transport and storage of data being logged at a remote location. Brown illustrates part of this in column 7, lines 40-45, where the network component object model (COM) is discussed. The network COM is necessary to the data transport and access performed remotely over the network in Brown:

One of ordinary skill in the art as defined above recognizes the extensive amount of network overhead that this communication system requires. One of ordinary skill in the art also recognizes that distributed computing solutions are advanced solution which allow for redundancy and backup capabilities in case of hardware failure or disaster recovery.

One of ordinary skill in the art as defined above is aware that the distributed computing functions of Brown can be easily implemented locally. The benefits of doing so are obvious to one of ordinary skill in the art. Local logging required no network connection, no network handshaking, no dropped packets, no computer-to-computer synchronization, no bandwidth limitations, and presented a significant cost

Art Unit: 2145

benefit in situations where it was not necessary to one of ordinary skill to have remote data logging, such as in non-critical data situations.

Brown teaches an advanced implementation of Appellant's invention. When viewed alongside Brown, Appellant's claimed invention is several steps back technologically from the abilities of Brown. Brown was filed in 1996 – six years before Appellant filed their application. Brown presented a more advanced version of Appellant's invention, and was patented three years before Appellant filed their simpler version of the Brown invention.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jeffrey R. Swearingen



Conferees:

Jason Cardone

Rupal Dharia



JASON CARDONE
SUPERVISORY PATENT EXAMINER



RUPAL DHARIA
SUPERVISORY PATENT EXAMINER